



Virginia  
Regulatory  
Town Hall

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## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Alcoholic Beverage Control Board
<b>Virginia Administrative Code (VAC) citation</b>	3 VAC5-50
<b>Regulation title</b>	Retail Operations
<b>Action title</b>	Updating Retail Operations Regulations as a Result of Periodic Review
<b>Date this document prepared</b>	May 30, 2012

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Purpose

*Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

The purpose of this action is to amend the board's regulation governing alcoholic beverage retailers to implement changes suggested by a recent periodic review. The action is intended to 1) incorporate the Board's current interpretation of the licensee's potential culpability when verifying age, 2) list crimes by description rather than Code citations when describing convictions that disqualify employees, 3) require designated managers to be able to communicate in English, 4) better define the types of restaurants that are eligible for a wine and beer license and to further distinguish restaurants that are eligible for a mixed beverage license, and 5) expand the ability of restaurants to advertise times within which drink specials are offered, without allowing advertising of specific special prices.

### Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.*

Section 4.1-111 of the Code of Virginia authorizes the Alcoholic Beverage Control Board to promulgate reasonable regulations necessary to carry out the provisions of this title or the general laws of the Commonwealth. §4.1-103 of the Code of Virginia compels the Alcoholic Beverage Control Board to “(e)stablish minimum food sale requirements for all retail licensees.”

### Need

*Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.*

The proposed regulatory actions are necessary for the following reasons. First, the Board wants to clarify the types of restaurants that are eligible for a wine and beer license, as well as those restaurants that qualify for a mixed beverage license. This proposal also assimilates the Board’s current interpretation of a licensee’s potential liability when relying on photo identification and expands current statutory provisions for licensees (ability to read, write, speak and understand the English language) to managers. It further simplifies the regulation by describing the criminal offenses that disqualify an employee of the business rather than citing specific sections of the Code of Virginia. Finally, the proposal will expand a restaurant’s ability to advertise the fact that drink specials are offered during specific times, but will not expand any practice associated with “happy hour”, such as extending the time frame beyond 9 pm.

### Substance

*Please detail any changes that will be proposed. Be sure to define all acronyms. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.*

It is anticipated that these proposals will amend Chapter 50 so that the regulated industry will have a better understanding of the types of restaurants eligible for licensure and give further guidance concerning the responsibility of licensees in conducting and advertising “happy hours”. It will also incorporate the Board’s interpretation of the licensee’s responsibility in examining an identification card when requesting proof of age and simplify the regulation by identifying the specific criminal conduct that disqualifies an individual as opposed to the section of the Code of Virginia.

### Alternatives

*Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.*

There is no viable alternative to affect the proposed changes. The use of Circular Letters and other guidance documents in lieu of regulatory changes was considered, but such instruments do not have the force of law as formally promulgated regulations.

**Public participation**

*Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.*

*Please also indicate pursuant to your Public Participation Guidelines whether a panel will be appointed to assist in the development of the proposed regulation. Please state one of the following: 1) a panel will be appointed and the agency's contact if you're interested in serving on the panel is \_\_\_\_\_; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulatory proposal.*

The agency is seeking comments on this regulatory action, including but not limited to 1) ideas to be considered in the development of this proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) the probable effect of the regulation on affected small businesses, and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email, or fax to **W. Curtis Coleburn, Chief Operating Officer, Department of Alcoholic Beverage Control, Post Office Box 27941, Richmond, Va. 23261, [curtis.coleburn@abc.virginia.gov](mailto:curtis.coleburn@abc.virginia.gov), telephone (804) 213-4409, facsimile (804) 213-4411.** Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

A public hearing will not be held following the publication of the proposed stage of this regulatory action.

**Family impact**

*Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

This action is not anticipated to have any impact on the institution of the family or family stability.

**Periodic review/small business impact review result**

*If this NOIRA is the result of a periodic review/small business impact review, please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and (2) indicate whether the regulation meets the criteria set out in Executive Order 14 (2010), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, please include, pursuant to Code of Virginia § 2.2-4007.1 E and F, a discussion of the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.*

Commenter	Comment	Agency response
20 nonregistered Townhall users	Retain regulation in current form, do not expand nudity or extend happy hours	The board attempts to strike a balance between the public safety and the ability of retailers of a lawful product to responsibly market. There are no plans to loosen restrictions on nudity in licensed establishments or the practices associated with “happy hour” promotions (i.e., no increase in allowed hours, no pitchers of mixed drinks, etc.). On the other hand, the board believes that current laws prohibiting the service of underage or intoxicated individuals, if properly enforced, should be sufficient to deal with the risk of overconsumption during “happy hour” promotions.
1 nonregistered Townhall user	Require fingerprints for license renewal	
1 nonregistered Townhall user	Allow exotic dancing, allow advertising of happy hour, extend happy hour	
Linda Hancock, Virginia College Alcohol Leadership Council	Eliminate happy hour or maintain current restrictions	
	Limit size of flavored malt beverages	
	Prohibit bartenders from mixing energy drinks with alcoholic beverages	
	Define a standard drink, and require bartenders to use a measured pour	
Wayne Frith, Chesterfield SAFE	Outlaw happy hour promotions	
Sue Parr	<p>1. None of the VA ABC regulations should be "loosened " in any way. The current regulations should remain in place.</p> <p>2. Happy Hour advertising should not be allowed in any form.</p> <p>3. Discount coupons for alcohol should not be allowed.</p> <p>4. Mixed drinks should not be sold by</p>	

	<p>the pitcher.</p> <p>In addition to that, the coalition membership supports:</p> <ol style="list-style-type: none"> <li>1. All alcohol seller/servers should be required to attend a mandatory training such as TIPS.</li> <li>2. There should be a "standard pour" measure to ensure the amount of alcohol in the drink does not exceed specified amount so individuals know how much alcohol they are consuming.</li> <li>3. Placing serving alcohol should not be allowed to sell energy drinks also- this avoids ability to create alcohol energy drinks banned by FDA as dangerous.</li> <li>4. "Supersized" malt liquor drinks (especially fruit flavored) should not be sold in single serving containers as it basically promotes binge drinking in a can!</li> <li>5. Though we know that VA ABC Board does not control state law, for the record, the coalition would like to state their support for dram shop &amp; social hosting laws in VA.</li> </ol>	
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In keeping with Executive Order 14 (2010), this proposal is necessary to promote the general health, safety and welfare of the public and is easily understandable. There purpose of these proposals is to incorporate existing Board interpretations of the regulations and simplify current language. While allowing for the expanded advertising of "happy hour", there is no proposed expansion of any of the practices associated with "happy hour".

The proposal is easily understandable and does not conflict with other state or federal laws or regulations. This regulation was last amended in 2011. The proposals are a result of industry suggestions.